

OPINION
51-124

December 20, 1951 (OPINION)

OFFICERS

RE: Powers of County Judge in Court of Increased Jurisdiction

 with Regards to Appointment of Counsel

In yours of December 17th you request our construction of Section 27-0831.

So far as we are able to learn, this section has never been construed by our court. This provision of our code was enacted as section 36 of chapter 80 of the laws of 1909. This section read, in part, follows:

"In all criminal cases triable in the county court when it is satisfactorily shown to the court that the defendant has no means, etc."

This is a repetition of section 20, chapter 43, laws of 1895. This continued to be the form of the section until the Code Revision Commission eliminated the words underlined above, to-wit, "triable in the county court." The reviser's note is "Revised for clarity without change in meaning." If the meaning has not been changed, then the section must be read as it originally stood that is, the county court would be empowered to appoint counsel only in criminal cases triable in his court. Since, in his capacity as examining magistrate only, it is reasonable that he should have only the powers of other examining magistrates. As no preliminary hearing is necessary in cases triable in his court (section 27-0832) the county judge sits only as an examining magistrate in cases not triable in his court. His jurisdiction as a trial judge is not invoked. It is, therefore, our opinion that the judge of a county court having increased jurisdiction has no power to appoint counsel for an indigent defendant where such defendant is before him for a preliminary hearing. Such power exists only when the defendant is in his court for actual trial.

ELMO T. CHRISTIANSON

Attorney General